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CANYON BRIDGE FUND I, LP
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9 **UNITED STATES BANKRUPTCY COURT**
NORTHERN DISTRICT OF CALIFORNIA
10 **SAN JOSE DIVISION**

11 In re:
12 WAVE COMPUTING, INC., et al.,
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14 Debtors.
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Bankruptcy Case No. 20-50682 (MEH)
Chapter 11 (Lead Case)

Assigned to the Hon. Elaine M. Hammond

**DECLARATION OF JOSE RAUL
ALCANTAR VILLAGRAN IN SUPPORT
OF LIMITED OPPOSITION TO DIP
FINANCING MOTION**

Date: May 1, 2020

Time: 11:15 a.m. (Pacific Time)

Place: United States Bankruptcy Court
280 South First St.
San Jose, CA 95113-3099

1 I, Jose Raul Alcantar Villagran, declare:

2 1. I am an attorney with the law firm of Nassiri & Jung LLP, counsel for interested
3 party Canyon Bridge Fund I, LP (“Canyon Bridge”) in the above-captioned chapter 11 cases.

4 2. Attached hereto as Exhibit A is a true and correct copy of a complaint filed by
5 Canyon Bridge on April 20, 2020 in the Superior Court of California for the County of Santa
6 Clara, under Temporary Case Number T20-880.

7 3. Upon information and belief, the complaint received a temporary case number
8 pending delayed processing times by the Clerk, as a result of the Covid-19 pandemic.

9 Except for statements made on information and belief in this declaration, I declare under
10 penalty of perjury under the laws of the United States of America that the foregoing is true and
11 correct.

12 Executed this 30th day of April 2020 at Alameda, California.

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14 /s/ Jose Raul Alcantar Villagran
15 JOSE RAUL ALCANTAR VILLAGRAN
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Exhibit A

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Attorneys for Plaintiff
CANYON BRIDGE FUND I, LP

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CANYON BRIDGE FUND I, LP,
individually and derivatively on behalf of
WAVE COMPUTING, INC.,

Plaintiff,

v.

WAVE COMPUTING, INC., TALLWOOD
VENTURE CAPITAL, TALLWOOD
INVESTMENT PARTNERS LLP,
TALLWOOD III, L.P., TALLWOOD III
ASSOCIATES, L.P., TALLWOOD III
PARTNERS, L.P., ENTROPY RESEARCH
LABS, LLC, DIOSDADO BANATAO, DESI
BANATAO, REY BANATAO, GREGORY
CORONA, ARTHUR SWIFT, ROBERT
CHRISTIANSEN, JOHN SCULL, DEREK
MEYER, JUAN IGNACIO ABOITIZ,
DENNIS BENCALA, and DOES 1 through
50, inclusive,

Defendants,

Case No.

COMPLAINT FOR:

- (1) SECURITIES FRAUD (CAL. CORP. CODE §§ 25401, 25501, 25504, 25504.1)**
- (2) FRAUD AND DECEIT (CAL. CIV. CODE §§ 1709, 1710)**
- (3) BREACH OF FIDUCIARY DUTY**
- (4) UNFAIR COMPETITION (CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)**
- (5) UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

**[PUBLIC-REDACTS MATERIALS FROM
CONDITIONALLY SEALED RECORD.]**

1 Plaintiff Canyon Bridge Fund I, LP (“Canyon Bridge” or “Plaintiff”) directly, and as to
2 certain breach of fiduciary duty claims, derivatively on behalf of Wave Computing, Inc.
3 (“Wave”), alleges upon personal knowledge with respect to itself, and upon information and
4 belief as to all other allegations based upon, *inter alia*, the investigation of counsel, as follows:

5 I. PARTIES

6 1. Plaintiff Canyon Bridge is a Delaware limited partnership which has held stock in Wave
7 continuously since about August 2017.

8 2. Defendant and nominal plaintiff Wave is a company incorporated under the laws of
9 Delaware and with its principal place of business in Santa Clara County, California. Wave is a
10 semi-conductor and computer learning company.

11 3. Defendant Diosdado Banatao (“Banatao” or “Dado Banatao”) is Chairman Emeritus and a
12 Director of Wave and was, prior to Wave’s acquisition of MIPS Tech, Inc. (“MIPS”), the sole
13 director of MIPS. Banatao is a well-known entrepreneur, venture capitalist and reputed billionaire
14 who owned approximately [REDACTED] of Wave through Tallwood Venture Capital and its affiliates at
15 the time of the initial Series E financing in June 2018 and owned more than [REDACTED] of Wave as a
16 result of the initial Series E financing.

17 4. Defendants Tallwood Venture Capital and its affiliated entities Tallwood III Associates,
18 L.P., Tallwood III Partners, L.P., Tallwood III, L.P., Tallwood Investment Partners LLP are a
19 group of venture capital funds owned by Banatao and his family (collectively, “Tallwood” or
20 “Tallwood Entities”). Tallwood is headquartered in Palo Alto, California and has held preferred
21 stock in Wave since Wave’s inception in 2009. Tallwood is and has always been, [REDACTED]
22 [REDACTED] and, at all times relevant herein, was and is a controlling shareholder of
23 Wave.

24 5. Defendant Entropy Research Labs, LLC (“Entropy Research Labs”) was, upon
25 information and belief, the sole stockholder of MIPS prior to its acquisition by Wave and is
26 wholly owned by the Banatao family, including Dado Banatao. Entropy Research Labs first
27 became a stockholder in Wave around June 2018 when it sold MIPS to Wave in exchange for
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1 [REDACTED] shares of Series E Preferred Stock. At the time of the MIPS transaction, Entropy
2 Research Labs was managed by Dado and Desi Banatao. Upon information and belief, Entropy
3 Research Labs was dissolved on December 31, 2018, and is named as a defendant pursuant to
4 California Corporations Code section 17707.07.

5 6. Defendant Desi Banatao is the son of Dado Banatao and a Director and Treasurer of
6 Wave. Desi Banatao was the President of MIPS when it was acquired by Wave and has at all
7 relevant times possessed a financial interest in Entropy Research Labs. Upon information and
8 belief, Desi Banatao also possesses a financial interest in Tallwood. Desi Banatao was appointed
9 as a Wave Director by Tallwood around October 2019.

10 7. Defendant Rey Banatao is the son of Dado Banatao and, upon information and belief, was
11 a Director of Wave in July 2019 when the Windtree Settlement (defined below) was executed.

12 8. Defendant Derek Meyer ("Meyer") was Chief Executive Officer and a Director of Wave
13 in 2018 who, upon information and belief, approved the Series E Financing.

14 9. Defendant Robert Christiansen ("Christiansen") is a founding managing director of Series
15 A-1 investor (and every subsequent preferred series) Southern Cross Venture Partners, and was a
16 Director of Wave in 2018 and 2019 who, upon information and belief, approved the Series E
17 Financing and the Series E extension.

18 10. Defendant John Scull ("Scull") is a co-founding managing director of Series A-1 investor
19 (and every subsequent preferred series) Southern Cross Venture Partners, and was a Director of
20 Wave in 2019 who, upon information and belief, approved the Windtree Settlement.

21 11. Defendant Juan Ignacio Aboitiz ("Aboitiz") was a Director of Wave in 2018 and 2019
22 who, upon information and belief, approved the Series E Financing and the Windtree Settlement.

23 12. Defendant Gregory Corona ("Corona") was a Director of Wave in 2019 when the
24 Windtree Settlement was executed. He is the Chairman and founder of Lakewood & Company,
25 LLC, which, upon information and belief, is a private investment firm and the sole owner of
26 Series E investor Windtree Drive, LLC, ("Windtree"). Upon information and belief, Windtree
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1 appointed Corona to the Wave Board of Directors in 2018 in connection with Windtree's Series E
2 investment.

3 13. Defendant Arthur Swift ("Swift") led the MIPS business for Wave, was a Chief Executive
4 Officer and Director of Wave in 2019 and signed the Windtree Settlement on behalf of Wave.
5 Swift was terminated as Wave CEO in 2019.

6 14. Defendant Dennis Bencala ("Bencala") is and was Chief Financial Officer at all relevant
7 times.

8 15. Non-party MIPS Tech, Inc. was a Delaware corporation that designed computer processor
9 architectures and chips. MIPS was indirectly wholly owned by Tallwood (through, upon
10 information and belief, Entropy Research Labs) and sold to Wave in June 2018 for approximately
11 [REDACTED] consisting of [REDACTED] shares of the newly created Series E Preferred stock,
12 valued at approximately [REDACTED] and assumption of [REDACTED] in promissory notes.

13 16. Non-party Windtree Drive, LLC was a California company that, upon information and
14 belief, was created specifically to invest approximately [REDACTED] in the extension of Wave's
15 Series E financing in September 2018. Windtree was managed by Oakmont Corporation and
16 wholly owned by Lakewood & Company, LLC.

17 17. The names and capacities, whether individual, corporate, associate or otherwise of Doe
18 Defendants 1 through 50 ("Doe Defendants"), inclusive, and each of their roles in this case, are
19 unknown to Plaintiffs who therefore sue said Doe Defendants by such fictitious names. Plaintiff
20 further alleges that each of said fictitious Doe Defendants is in some manner responsible for the
21 acts and occurrences herein set forth. Plaintiff will amend this complaint to show their true names
22 and capacities, and the manner in which each fictitious Doe Defendant is responsible, when
23 ascertained.

24 **A. Agency, Unity of Interest, Aiding and Abetting, and Conspiracy**

25 18. At the times herein mentioned, each Defendant was an agent, servant, employee, *alter*
26 *ego*, predecessor, successor and/ or joint venturer of another Defendant, and was at all times
27 acting within the course and scope of such agency, service, employment and/ or joint venture, and
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1 each Defendant has ratified, approved, and authorized the acts of another Defendant or other
2 Defendants with full knowledge of said acts. Each of the Defendants is responsible in some
3 manner for the conduct alleged herein and for the injuries suffered by Plaintiff.

4 19. In committing the wrongful acts alleged herein, Defendants have pursued, or joined in the
5 pursuit of, a common course of conduct, and acted in concert with and conspired with one
6 another, in furtherance of their common plan or design.

7 20. In addition to the wrongful conduct herein alleged as giving rise to primary liability,
8 Defendants further aided and abetted and/or substantially assisted each other in breach of their
9 respective duties as herein alleged. In taking such actions, as particularized herein, to
10 substantially assist the commission of the wrongdoing complained of, each Defendant acted with
11 knowledge of the primary wrongdoing, substantially assisted the accomplishment of that
12 wrongdoing, and was aware of his or her overall contribution to, and furtherance of, the
13 wrongdoing. Defendants' acts of aiding and abetting included, *inter alia*, the acts each of them
14 are alleged to have committed in furtherance of the conspiracy, common enterprise, and common
15 course of conduct complained of herein.

16 II. JURISDICTION AND VENUE

17 21. Personal jurisdiction is proper in this Court as to Defendants Diosdado Banatao, Desi
18 Banatao, Rey Banatao, Derek Meyer, Robert Christiansen, John Scull, Juan Ignacio Aboitiz,
19 Gregory Corona, Arthur Swift, and Dennis Bencala because: (1) each is a resident of the State of
20 California; (2) each purposely availed himself of the benefits of the State of California; (3) the
21 controversy is related to and arises out of each Defendant's contacts with the State of California;
22 and (4) the assertion of personal jurisdiction comports with fair play and substantial justice.

23 22. Personal jurisdiction is proper in this Court as to Defendants Wave, the Tallwood Entities
24 and Entropy Research Labs because: (1) each has its principal place of business in the State of
25 California; (2) each availed itself of the benefits of the State of California; (3) the controversy is
26 related to and arises out of each's contacts with the State of California; and (4) the assertion of
27 personal jurisdiction comports with fair play and substantial justice.

23. Venue is proper in this judicial district pursuant to California Code of Civil Procedure section 395(a) because a substantial part of the events giving rise to the claims herein occurred in this County and because Defendants or some of them are located in this County.

III. FACTUAL ALLEGATIONS

A. Banatao, Through Tallwood, Controls Wave

24. Upon information and belief Wave was founded in 2009 by Banatao, a well-known entrepreneur (and reputed billionaire). Banatao's co-founder was Robert Christiansen of Southern Cross Venture Partners ("Southern Cross"), who along with Tallwood, participated in every Wave preferred stock offering from the Series A-1 in 2009 through the Series E in 2018.

25. From Wave's inception to the present, Banatao has held his shares through his personal investment vehicles, Tallwood, and upon information and belief has, with one brief exception in late 2019, served on Wave's Board of Directors as its Chairman.

26. Upon information and belief, by early 2017 and at all relevant times since then, Banatao, through his control of Tallwood, held a near or actual majority of Wave's voting shares, and never less than [REDACTED]

27. Upon information and belief, at all times since 2017, Banatao (both individually and through Tallwood) has controlled Wave, its Board of Directors and its Officers. Additionally, in the event of any deadlock on the Board of Directors, Tallwood is entitled to the tie breaking vote.

28. In August 2017, Canyon Bridge invested approximately [REDACTED] in Wave's Series D financing. Canyon Bridge has continuously held approximately [REDACTED] Series D Preferred shares from 2017 to the present.

B. A Conflicted Wave Board Approves Wave's Acquisition of MIPS from Banatao

29. In June 2018, Wave acquired MIPS from Entropy Research Labs for consideration valued at [REDACTED]. Upon information and belief, Entropy Research Labs, an investment fund wholly owned by Banatao and two of his children, Desi and Tala Maria Banatao, had previously acquired MIPS from Tallwood (also wholly owned by the Banatao family) in anticipation of the Wave acquisition of MIPS. Upon information and belief, Dado Banatao controlled and had a majority

1 financial interest in Entropy Research Labs. Accordingly, the MIPS acquisition was a transaction
2 between Wave and its controlling stockholder, Banatao.

3 30. In connection with the MIPS acquisition, Wave created the Series E Preferred stock.
4 Initially, the Series E stock was not sold to any investors, but instead was used solely as
5 consideration for the MIPS acquisition, whereby Entropy Research Labs received [REDACTED] of
6 the Series E Preferred stock, valued at [REDACTED] and Wave assumed of [REDACTED] in
7 promissory notes.

8 31. Banatao and Tallwood controlled Wave generally and the MIPS transaction specifically.
9 The Board approved the MIPS acquisition on June 5, 2018, and consisted of Directors Banatao,
10 Robert Christiansen, Derek Meyer and Juan Ignacio Aboitiz. Each of these Directors, along with
11 Defendant Bencala, was not disinterested and independent with respect to the MIPS acquisition,
12 and each breached his fiduciary duties to Plaintiff.

13 32. Tallwood and its designated Director on the Wave Board of Directors, Banatao, had a
14 clear conflict of interest with respect to this transaction through Banatao's interest in Entropy
15 Research Labs.

16 33. At the time of the MIPS acquisition, Tallwood held over [REDACTED] of the Series A-1, B and C,
17 which entitled Tallwood (and Banatao) to directly name at least two Wave directors. Upon
18 information and belief, Tallwood appointed Banatao and Robert Christiansen of Southern Cross
19 Venture Partners to the Board. Upon information and belief, Tallwood and Southern Cross not
20 only co-invested in Wave through every round of funding, they also had a history of co-
21 investment in other companies, including a company called Redfern Integrated Optics. Because
22 of this personal and business relationship, and because Banatao had the ability to remove
23 Southern Cross representatives from Wave's Board, Christiansen (and Southern Cross) was
24 beholden to and controlled by Banatao.

25 34. Derek Meyer, who was hired by Banatao to serve as Wave's CEO, and Defendant
26 Bencala, Wave's CFO, both were beholden to Banatao because Banatao exercised substantial
27 control over each's salary and continued employment. Upon information and belief, the fourth
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1 Director Juan Ignacio Aboitiz, was a longtime friend of Banatao's from the Philippines and
2 beholden to Banatao.

3 35. Upon information and belief, Wave neither created a properly functioning special
4 committee to evaluate the MIPS acquisition, nor did it obtain a fully informed approval from a
5 majority of the minority stockholders. Thus, Defendants have the burden of proof to show that the
6 MIPS acquisition was entirely fair.

7 36. Upon information and belief, MIPS was worth substantially less than the [REDACTED]
8 Wave paid for it. Rather than exercise reasonable diligence or due care and negotiate at arms-
9 length, each of the Directors, who were personally interested and beholden to and controlled by
10 Banatao, breached their fiduciary duties to Plaintiff and other Wave shareholders by summarily
11 approving the MIPS acquisition on unfair terms dictated by Banatao.

12 37. Upon information and belief, Wave failed to obtain an independent financial or legal
13 analysis of MIPS, and instead merely accepted what Banatao (through Tallwood) and his agents
14 presented to it. Upon information and belief, Defendants Meyer and Bencala "rubber stamped"
15 Banatao's false and misleading representations about MIPS's financial condition and business
16 prospects and, in a presentation they assembled in June 2018 (the "June 18 Management
17 Presentation"), proposed that the Board and Wave shareholders approve the [REDACTED] MIPS
18 acquisition. Plaintiff was unaware, and could not have determined by using due diligence, that the
19 June 18 Management Presentation grossly overstated the value to Wave of the MIPS acquisition
20 and that not only would the acquisition not improve Wave's bottom line, cash flow and prospects,
21 but also was likely to substantially damage Wave.

22 38. On information and belief, had the Wave Directors retained an independent financial
23 advisor to evaluate MIPS, as they should have, they would have known that MIPS's financial
24 prospects could not support the [REDACTED] transaction price. Instead, the Directors relied on
25 Greenhill & Co., a firm that had been previously retained by Wave (and not an independent
26 committee) to provide financial advisory services. Greenhill & Co. was conflicted and not
27 independent because, among other reasons, it received a fee of [REDACTED] contingent on the
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1 completion of the MIPS acquisition, and an additional fee of [REDACTED] contingent on Wave
2 raising at least \$50 million in the Series E extension.

3 39. Upon completion of the transaction in June 2018, Wave issued a press release which
4 claimed that this acquisition would add to the Company's bottom line and be cash positive. Wave
5 knew or should have known, however, that MIPS would not be cash positive or accretive. This
6 transaction was not fair to Wave and its shareholders, as Wave paid substantially more for MIPS
7 than MIPS was reasonably worth, whether standing alone or in conjunction with Wave. Plaintiff
8 would rely on this press release, as well as other representations made by Defendants and
9 described below, in deciding to purchase shares of Wave's Series E Preferred stock.

10 40. As a result of the Series E issuance to Entropy Research Labs, the value and voting power
11 of Wave stock held by Canyon Bridge were diminished.

12 **C. Wave Authorizes and Sells \$50 Million in Additional Series E Shares to**
13 **Windtree, Canyon Bridge and Others**

14 41. In September 2018, just after completion of the MIPS acquisition and creation of the
15 Series E Preferred stock, Wave authorized an additional issuance of \$50 million of Series E stock
16 at [REDACTED] per share. The Wave Board in September 2018 consisted of Banatao, Robert
17 Christiansen, Derek Meyer and Juan Ignacio Aboitiz.

18 42. Unlike the initial Series E issuance in June 2018, the extension was intended to raise
19 capital for Wave. The Series E extension in September 2018 was led by Windtree, who invested
20 [REDACTED] in the round. Canyon Bridge also participated, buying [REDACTED] shares of Series E
21 Preferred stock for [REDACTED]

22 43. Utilizing financial statements, the June 2018 Management Presentation, and a valuation
23 prepared by Carta Valuations LLC ("Carta") that Defendants knew grossly understated Wave's
24 liabilities and overstated Wave's net worth and prospects after the MIPS acquisition (the
25 "Valuation"), Wave, Banatao, Christiansen, Meyer, Aboitiz and Bencala deliberately
26 misrepresented Wave's financial condition and prospects to induce Canyon Bridge to purchase
27 the Series E Preferred stock. Canyon Bridge is informed and believes that this stock is now
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1 essentially worthless. Canyon Bridge is further informed and believes that Banatao and Tallwood
2 caused, enabled, aided and abetted the fraud perpetrated by Wave and the other Defendants.

3 44. In deciding to participate in the Series E extension, Plaintiff justifiably relied on the June
4 2018 Management Presentation that valued MIPS at [REDACTED] grossly overstating Wave's
5 financial condition and prospects, and which falsely indicated that the MIPS transaction would
6 improve Wave's business prospects and bottom line, "adding a projected [REDACTED] in revenue and
7 [REDACTED] in margin through 2022," and set the "basis for [a] new investment round" at a valuation
8 greater than [REDACTED]. Defendants knew that none of these assertions was true, but were
9 instead made in an attempt to deceive potential investors, including Canyon Bridge, and to induce
10 prospective investors, including Canyon Bridge, to assent to Wave's acquisition of MIPS and
11 later, to purchase shares of Wave stock as part of the Series E financing.

12 45. Indeed, in large part because of the MIPS acquisition, Wave and Banatao represented to
13 Canyon Bridge and others that the pre-money valuation for the Series E offering was [REDACTED]
14 [REDACTED]. Within months of closing the Series E extension, however, Defendants' scheme began to
15 unravel. Wave would pay more than [REDACTED] to Windtree, the lead Series E investor, to settle
16 claims related to the Series E offering, sparking a financial freefall that has left Wave worth less
17 than [REDACTED] today.

18 46. The representations of Wave's financial condition and prospects and that the acquisition
19 of MIPS would improve Wave's bottom line and cash flow and prospects (and hence would not
20 damage them) were material to Canyon Bridge's decision to invest in Wave's Series E round of
21 financing. At the time of the Series E round of financing, Canyon Bridge was unaware, and could
22 not have determined by using due diligence, that the acquisition of MIPS not only would not
23 improve Wave's bottom line, cash flow and prospects, but also was likely to substantially damage
24 Wave, or that MIPS' financial records grossly overstated MIPS' net worth and value. Canyon
25 Bridge, like Windtree and other purchasers of the Series E Preferred stock, reasonably relied to its
26 detriment on Wave's and Banatao's statements to conclude that the Series E Preferred stock was
27 worth the [REDACTED] per share that Canyon Bridge paid for it.

1 47. On information and belief, Wave, Banatao and Tallwood each was aware that the
2 information provided to Plaintiff in connection with the MIPS acquisition and Series E offering
3 misrepresented the total liabilities and value of Wave and that the acquisition of MIPS was
4 unlikely to improve Wave's bottom line or cash flow or prospects and instead was likely to
5 damage them, but did not attempt to correct the information provided to prospective investors
6 including Canyon Bridge (which it knew was a potential investor) or otherwise to prevent the
7 misrepresentations.

8 **D. Wave Enters Into a [REDACTED] Plus Settlement with Windtree, the Lead**
9 **Series E Investor**

10 48. In conjunction with its Series E investment, Windtree appointed Gregory Corona to
11 Wave's Board of Directors in or around September 2018.

12 49. Upon information and belief, shortly after the close of the Series E in September 2018,
13 Windtree discovered that Wave, Tallwood and Banatao had made material misstatements or
14 omissions related to the Series E offering. Upon information and belief, Desi Banatao and/or Rey
15 Banatao informed Windtree and/or Defendant Corona that MIPS had "cooked the books" to
16 inflate or overstate its business and financial prospects as well as to understate its liabilities,
17 which were far in excess of what was disclosed to prospective Series E investors.

18 50. Rather than disclose to all Wave shareholders the possibility of malfeasance in connection
19 with the MIPS acquisition and Series E offering, upon information and belief, Defendant Corona
20 kept this information to himself, sharing it only with Windtree (and its manager, Oakmont). Upon
21 information and belief, Corona did not disclose any of this to Wave shareholders because by
22 keeping it secret, he increased the chances that Wave would pay the [REDACTED] back to
23 Windtree. (Indeed, Wave did so agree, in exchange for Windtree's commitment to destroy and
24 keep confidential all information related to Windtree's allegations, in effect ensuring the Wave
25 shareholders would never learn the substance of Windtree's allegations.) Corona thus breached
26 his duty of loyalty by placing the interests of Windtree ahead of those of Wave stockholders
27 generally.
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1 51. Upon information and belief, in the first half of 2019, Windtree asserted claims sounding
2 in fraud against Wave, its Directors and Officers, Tallwood and Banatao and threatened that if it
3 did not receive back its entire [REDACTED] Series E investment, plus \$350,000 in attorneys' fees,
4 Windtree would sue each of them.

5 52. Upon information and belief, Wave failed to assemble a properly functioning special
6 committee of disinterested and independent directors to evaluate Windtree's claims and the
7 settlement. Instead, Wave's Board of Directors, upon information and belief consisting of
8 Banatao, his son Rey Banatao, Scull (of Southern Cross), Aboitiz, and Wave's new CEO Arthur
9 Swift selfishly approved a settlement agreement with Windtree which would extinguish their
10 personal liabilities and the liabilities of Banatao and Tallwood. The settlement required Wave to
11 pay Windtree [REDACTED] plus \$350,000 in attorneys' fees, in exchange for Windtree's shares of
12 stock purchased in the Series E round of financing ("Windtree Settlement").

13 53. On June 30, 2019, one day before the Windtree Settlement was executed, a Wave
14 shareholder, through his attorney, sent a letter to Banatao and Swift demanding that the Company
15 not enter in to the settlement with Windtree because of the devastating financial impact it would
16 have on the Company. Wave nonetheless executed the Windtree Settlement on July 1, 2019.

17 54. Upon information and belief, the Board understood that as a result of the Windtree
18 Settlement, the Company and its business operations would be crippled, including shutting down
19 Wave's AI operations. In fact, the Windtree Settlement did cause Wave to enter a "death spiral"
20 that has drastically reduced its value and possibly caused it to become insolvent.

21 55. The Wave Directors approved the Windtree Settlement under disabling conflicts of
22 interest, and a majority of the Board of Directors that approved the Windtree Settlement was not
23 disinterested and independent.

24 56. Gregory Corona had a conflict of interest because he was the Chairman of the Board of
25 Lakewood & Company, LLC, the owner of Windtree and recipient of over [REDACTED] from the
26 settlement. Arthur Swift, Wave's CEO, had a conflict of interest and was controlled by and
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1 beholden to Banatao and Tallwood, because Banatao controlled Swift's salary and continued
2 employment.

3 57. Banatao, Christiansen (of Southern Cross) and Aboitiz were each Directors when the
4 MIPS acquisition and the \$50 million Series E extension were approved, and upon information
5 and belief, it was these Board decisions and acts that formed the basis for Windtree's claims.
6 Accordingly, Banatao and Tallwood, Scull (a Southern Cross partner) and Aboitiz each faced
7 personal liability to Windtree, liability which was released in the Windtree Settlement. Because
8 their personal liabilities were released, Banatao, Scull (on behalf of Christiansen and Southern
9 Cross) and Aboitiz were each conflicted and unable to fairly consider whether the Windtree
10 Settlement was in the best interests of Wave and its shareholders.

11 58. The Windtree Settlement indicates that Windtree's claims were valid. The decision to
12 settle could not possibly have been made in good faith or lawfully, or consistent with fiduciary
13 duties to shareholders.

14 59. The Windtree Settlement included the extremely unusual and suspicious requirement that
15 Windtree and its counsel destroy all documents, including work product prepared in the course of
16 investigating the disputes underlying the settlement, they possessed relating to the dispute leading
17 up to the settlement and the negotiation of the settlement. The Windtree Settlement also provided
18 for Wave to destroy or return to Windtree all documents provided by Windtree related to the
19 dispute. These two unusual provisions ensured that little or no written evidence of Windtree's
20 claims would be preserved, and that any shareholder other than Windtree would not obtain
21 evidence of the breaches of fiduciary duties related to the Windtree Settlement. This is strong
22 evidence that Windtree's claims were valid. No other inference is reasonable.

23 60. Despite repeated requests from Canyon Bridge and at least one other Wave shareholder
24 for information about the dispute that led up to this settlement, Wave never disclosed to Canyon
25 Bridge what Windtree's allegations were, any aspect of who or how the Board investigated those
26 allegations, what materials were relied on in the investigation, and any of the findings of fact or
27 law. Wave has steadfastly refused to provide information to Canyon Bridge and other minority
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1 shareholders about the dispute leading up to the settlement. This also indicates that Windtree's
2 claims likely were valid.

3 61. Because Wave would not voluntarily disclose any information about the Windtree
4 Settlement, on March 20, 2020, Canyon Bridge made a shareholder's demand for inspection of
5 records relating to the Windtree settlement (and other matters) pursuant to 8 Delaware Code
6 section 220. As of the filing of this Complaint, Canyon Bridge has not received a single document
7 or a commitment as to when documents will be produced. This further indicates that Windtree's
8 claims likely were valid.

9 62. Moreover, on information and belief, Wave did not have enough money to fund the
10 Windtree Settlement and depended on Tallwood to loan at least [REDACTED] to Wave to enable
11 Wave to consummate the Windtree Settlement. Tallwood, and its controller Banatao, agreed to
12 finance the Windtree Settlement because the settlement would extinguish claims against
13 Tallwood and Banatao. This also is strong evidence that Windtree's claims were valid.

14 63. It also is highly unusual, and engenders suspicion, that immediately after this transaction
15 was consummated, upon information and belief, all of Wave's then-Directors who approved the
16 Windtree Settlement, but for Banatao, resigned their positions as Directors. For all of these
17 reasons, Wave's subsequent contention that it investigated Windtree's claim and found no
18 liability lacks credibility.

19 64. The Windtree Settlement was not fair to Wave and its minority shareholders. It benefited
20 only Banatao, Tallwood, the Wave Directors and Windtree and sent Wave into a "death spiral"
21 that has caused Wave's net worth to decrease from a [REDACTED] pre-Series E valuation to, upon
22 information and belief, a less than [REDACTED] valuation today.

23 65. This was an extraordinary action that must have resulted from Wave's Board's concerns
24 about liability for Wave Board members and Tallwood related to the Series E offering to
25 Windtree, and upon information and belief, related to the indefensible MIPS acquisition and
26 subsequent Series E offering.

1 66. Upon information and belief, whatever liabilities Defendants had to Windtree were a
2 direct result of Wave's purchase of Series E shares, and thus are necessarily liabilities to all
3 purchasers of Series E shares, including Canyon Bridge.

4 67. As a result of the weakened financial condition of Wave resulting from the MIPS
5 acquisition and the Windtree Settlement, Tallwood has become the [REDACTED]
6 Wave.

7 **E. Wave Fraudulently Offers to "Redeem" Canyon Bridge's Series E Shares**

8 68. Rather than provide Plaintiff and other minority shareholders with information about
9 Windtree's claims and the Windtree Settlement, Wave, Banatao and Tallwood attempted to
10 pacify Plaintiff and other minority shareholders by having Wave offer Series E investors,
11 including Plaintiff, the opportunity to redeem their Series E shares at a price of [REDACTED] per share.
12 Upon information and belief, because Wave did not have sufficient cash, it could only redeem
13 Series E shares if Tallwood financed the redemptions (as, upon information and belief, it had
14 done for at least [REDACTED] of the Windtree Settlement). Plaintiff suspects that Wave, Banatao
15 and Tallwood never intended to actually purchase Plaintiff's Series E shares, and instead made
16 the offer only to induce Plaintiff to refrain from asking for information about the Windtree
17 Settlement and to prevent Plaintiff from instituting legal action related to the MIPS acquisition,
18 Series E offering, and Windtree Settlement.

19 69. In order to dissuade Plaintiff from redeeming its Series E shares, Wave, Banatao and
20 Tallwood, acting through Wave, made further material misstatements and omissions regarding
21 Wave's financial condition. Through Wave's corporate counsel, Plaintiff was provided with
22 falsified financials that put Wave's liabilities as of the second quarter of 2019 at [REDACTED]. In
23 truth, however, Wave, Banatao and Tallwood deliberately understated Wave's liabilities by [REDACTED]
24 [REDACTED] in order to convince Plaintiff that instead of redeeming its Series E shares, it should take a
25 convertible note and allow Wave additional time to recover from the consequences of the
26 Windtree Settlement. Upon information and belief, Wave, Banatao and Tallwood knew or had
27 reason to know that Wave's total liabilities actually were approximately [REDACTED]
28

1 70. Plaintiff had no means by which to discover that the financials it received understated
2 Wave's liabilities by [REDACTED]. In reliance on those falsified financials, Plaintiff elected not to
3 immediately redeem its Series E shares, and not to press on its legal claims related to the breaches
4 of fiduciary duty related to the MIPS acquisition, Series E offering and Windtree Settlement.

5 71. When around November 2019 Plaintiff informed Wave that it would redeem its Series E
6 shares, Wave's corporate counsel disclosed to Plaintiff, for the first time, that Wave's liabilities
7 were actually [REDACTED] higher than had been presented to Plaintiff just months earlier, and that
8 as a result, Wave would not redeem Plaintiff's shares.

9 72. Upon information and belief, Wave's financial condition has deteriorated to the point
10 where it will likely seek bankruptcy protection, leaving Plaintiff with little chance of recovering
11 or maintaining any of its investments or equity interest in the Company. Conversely, because of
12 Banatao's control over Wave and [REDACTED],
13 Tallwood (and Banatao) is likely to recover or maintain most if not all of its financial interest in
14 Wave.

15 **IV. DEFENDANTS BEAR THE BURDEN OF SHOWING THE ENTIRE FAIRNESS**
16 **OF THE MIPS ACQUISITION AND THE WINDTREE SETTLEMENT**

17 73. The duty of loyalty mandates that the best interest of the corporation and its shareholders
18 takes precedence over any interest possessed by a director, officer or controlling shareholder and
19 not shared by the stockholders generally.

20 74. With respect to the MIPS acquisition and the Windtree Settlement, Defendants here were
21 "interested" because they stood on both sides of a transaction or expected to derive a material
22 personal financial benefit from the transaction that did not devolve on all stockholders generally.

23 75. Plaintiff alleges herein that Defendants, separately and together, violated fiduciary duties
24 owed to Plaintiff and the other shareholders of Wave, including their duties of loyalty, good faith,
25 candor, due care, and independence, insofar as they (i) disregarded conflicts of interest and
26 engaged in self-dealing; (ii) obtained for themselves or those they were beholden to personal
27 benefits, including personal financial benefits, not shared equally by Plaintiff or other
28 shareholders; and (iii) chose not to provide Plaintiff and other shareholders with all the

1 information necessary to make an informed decision or to take corrective action in connection
2 with the Company's actions.

3 76. Under Delaware law, because the Directors confronted actual conflicts of interest, such
4 that the Directors making the challenged decisions did not comprise a disinterested and
5 independent majority of the Board, the "entire fairness" standard of review applies.

6 77. With respect to the MIPS acquisition, there was no fair price and no fair process. Banatao
7 controlled the Board and the transaction, and he (through Tallwood and Entropy Research Labs)
8 stood on both sides of the transaction. Because it was controlled by Banatao, Wave failed to
9 establish a special committee to evaluate, negotiate and approve the transaction, failed to conduct
10 any independent diligence, and failed to obtain an uncoerced and fully informed approval from a
11 majority of the minority stockholders.

12 78. With respect to the Windtree Settlement, there was no fair price and no fair process. Upon
13 information and belief, there was no properly functioning special committee to evaluate the
14 proposed settlement, and Wave did not secure an uncoerced and fully informed approval from a
15 majority of the minority stockholders. Banatao, Scull and Aboitiz, who approved the Windtree
16 Settlement, received personal benefits not shared with other shareholders because the Windtree
17 Settlement released their personal liabilities (or those of their funds) related to Windtree's claims
18 against them and Wave. Gregory Corona received a personal benefit not shared with other
19 shareholders because he was, upon information and belief, a significant owner and the chairman
20 of Windtree, which received more than [REDACTED] as a result of the Windtree Settlement.

21 79. Tallwood, [REDACTED] at the time of the challenged transactions,
22 which had a controlling equity interest and two appointed Board members, chose to disregard its
23 highest fiduciary duties owed to stockholders and brazenly act in its own self-interest.

24 **V. DEMAND IS EXCUSED AS FUTILE**

25 80. Canyon Bridge brings claims for breach of fiduciary duty directly and also derivatively in
26 the right of and for the benefit of Wave to redress the injuries suffered by Wave as a result of the
27
28

1 Defendants' breaches of fiduciary duties. Plaintiff Canyon Bridge and its counsel will adequately
2 and fairly represent the interest of Wave in enforcing and prosecuting its rights.

3 81. Plaintiff Canyon Bridge was a shareholder of Wave at the times of the wrongdoings
4 complained of, has continuously been a shareholder, and is a current shareholder.

5 82. Despite having detailed knowledge of the facts or wrongdoing by Defendants, Wave's
6 Board has, at all times, failed and refused to seek recovery for Wave for any of the misconduct
7 alleged herein. Defendants, through their attorneys, have steadfastly denied all wrongdoing.

8 83. Based on Defendants' acts and omissions in direct violation of their fiduciary duties of
9 care, good faith, honesty and loyalty, a pre-suit demand on the Wave Board is excused as a futile
10 and useless act. Upon information and belief, Wave's current Board consists of Dado Banatao,
11 Desi Banatao, and Ker Zhang. Both Dado Banatao and Desi Banatao have been named as
12 Defendants in this suit and, on information and belief, personally profited from the wrongdoing
13 alleged herein. They are not able to conduct an independent objective investigation of the alleged
14 wrongdoing, because they were appointed by Tallwood and have a personal interest in protecting
15 Tallwood from liability. Dado Banatao is likely to face personal liability for breach of the duty of
16 loyalty because he stood on both sides of the MIPS transaction and because he secured a personal
17 benefit from the releases in the Windtree Settlement. Dado's son, Desi Banatao, is beholden to
18 Dado and cannot be expected to fairly consider any demand to name his father in a suit for self-
19 dealing and breach of the fiduciary duty of loyalty. Desi Banatao also has a direct financial
20 interest in Defendants Tallwood and Entropy Research Labs, faces a substantial risk of personal
21 liability for the MIPS transaction, and cannot be expected to fairly consider a demand to sue
22 himself, Tallwood and Entropy Research Labs. Thus, a majority of Wave's Board cannot be
23 relied upon to reach a truly independent decision whether to commence, maintain and prosecute
24 the demanded action against themselves and the other Defendants responsible for the misconduct
25 alleged in this complaint.

1 84. As established herein, because there is at least a reasonable doubt that the challenged
2 transactions were the product of a valid exercise of business judgment by the Defendants, demand
3 is excused.

4 **CAUSES OF ACTION**

5 **COUNT I**

6 **(SECURITIES FRAUD: CAL. CORP. CODE §§ 25400, 25401, 25500, 25501 & 22504.1)**

7 **(By Plaintiff Directly Against Wave, Diosdado Banatao, Desi Banatao, Robert**
8 **Christiansen, Derek Meyer, Juan Ignacio Aboitiz, Dennis Bencala, Entropy Research**
9 **Labs, LLC, Tallwood Venture Capital, Tallwood Investment Partners LLP, Tallwood III,**
10 **L.P., Tallwood Associates, L.P., and Tallwood Partners, L.P.)**

11 85. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in
12 full herein.

13 86. In 2018, Defendants communicated with Plaintiff about whether Plaintiff would want to
14 purchase Series E Preferred stock at [REDACTED] per share. Each Defendant willfully participated and
15 provided material assistance to the other in assembling and providing to Plaintiff false and
16 misleading analyses and financial materials related to Wave's recent acquisition of MIPS and
17 Wave's financial condition and prospects generally.

18 87. Reasonably and justifiably relying on these representations, Plaintiff agreed to purchase
19 \$3 million of Series E Preferred stock.

20 88. Plaintiff is informed and believe, and thereon alleges, that Defendants knew the
21 representations concerning the MIPS acquisition and Wave's financial condition and prospects
22 were false and/or misleading at the time the statements were made, or that Defendants
23 intentionally failed to disclose material information to Plaintiff that rendered these representations
24 false and/or misleading, and made these material representations in an effort to fraudulently
25 induce Plaintiff to agree to purchase Series E Preferred stock.

26 89. Had Plaintiff known the foregoing facts, it would not have agreed to purchase Series E
27 Preferred stock.

28 90. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered
substantial damages in connection with its fraudulently induced purchase of Series E Preferred

1 shares in Wave. Plaintiff has been damaged in an amount to be proven at trial, including, but not
2 limited to, (1) monies that Plaintiff would have earned had Plaintiff invested its money elsewhere,
3 and/or (2) the difference between the actual value of the securities acquired by Plaintiff and the
4 consideration paid by Plaintiff. Alternatively, Plaintiff is entitled to rescission of its [REDACTED]
5 purchase of Wave Series E Preferred shares.

6 **COUNT II**

7 **(SECURITIES FRAUD: CAL. CORP. CODE § 25504)**

8 **(By Plaintiff Directly Against Diosdado Banatao, Tallwood Venture Capital, Tallwood**
9 **Investment Partners LLP, Tallwood III, L.P., Tallwood Associates, L.P., and Tallwood**
10 **Partners, L.P.)**

11 91. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in
12 full herein.

13 92. At all times relevant herein, and in connection with the statements made to Plaintiff
14 related to the Series E offering, Defendants Banatao, Tallwood Venture Capital, Tallwood
15 Investment Partners LLP, Tallwood III, L.P., Tallwood Associates, L.P., and Tallwood Partners,
16 L.P. exercised direct and/or indirect control over Wave and its Directors and Officers, and had
17 actual knowledge or reasonable grounds to believe in the existence of facts by reason of which
18 the liability of Wave and its Directors and Officers to Plaintiff exist.

19 93. Accordingly, Defendants Banatao, Tallwood Venture Capital, Tallwood Investment
20 Partners LLP, Tallwood III, L.P., Tallwood Associates, L.P., and Tallwood Partners, L.P. are
21 jointly and severally liable to Plaintiff for damages sustained as a result of Plaintiff's purchase of
22 Series E Preferred shares.

23 **COUNT III**

24 **(FRAUD AND DECEIT: CAL. CIV. CODE §§ 1709 & 1710; AIDING AND ABETTING)**

25 **(By Plaintiff Directly Against Wave, Diosdado Banatao, Desi Banatao, Robert**
26 **Christiansen, Derek Meyer, Juan Ignacio Aboitiz, Dennis Bencala, Entropy Research**
27 **Labs, LLC, Tallwood Venture Capital, Tallwood Investment Partners LLP, Tallwood III,**
28 **L.P., Tallwood Associates, L.P., and Tallwood Partners, L.P.)**

94. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in
full herein.

1 95. In 2018, Defendants communicated with Plaintiff about whether Plaintiff would want to
2 purchase Series E Preferred stock at [REDACTED] per share. Each Defendant willfully and intentionally
3 provided to Plaintiff, and materially aided and abetted each other Defendant in so providing to
4 Plaintiff, false and misleading analyses and financial materials related to Wave's recent
5 acquisition of MIPS and Wave's financial condition and prospects generally.

6 96. Reasonably and justifiably relying on these representations, Plaintiff agreed to purchase
7 \$3 million of Series E Preferred stock.

8 97. Plaintiff is informed and believe, and thereon alleges, that Defendants knew the
9 representations concerning the MIPS acquisition were false at the time the statements were made,
10 or that Defendants intentionally failed to disclose material information to Plaintiff that rendered
11 these representations false, and made these material representations in an effort to fraudulently
12 induce Plaintiff to agree to purchase Series E Preferred stock.

13 98. Had Plaintiff known the foregoing facts, it would not have agreed to purchase Series E
14 Preferred stock.

15 99. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered
16 substantial damages in connection with its fraudulently induced purchase of Series E Preferred
17 shares in Wave. Plaintiff has been damaged in an amount to be proven at trial, including, but not
18 limited to, (1) monies that Plaintiff would have earned had Plaintiff invested its money elsewhere,
19 and/or (2) the difference between the actual value of the securities acquired by Plaintiff and the
20 consideration paid by Plaintiff.

21 100. Defendants acted with fraud, malice, and oppression, as a result of which Plaintiff is
22 entitled to punitive damages to punish Defendants, and to set an example for others considering
23 similar misconduct.

24 **COUNT IV**

25 **(FRAUD AND DECEIT: CAL. CIV. CODE §§ 1709 & 1710; AIDING AND ABETTING)**

26 **(By Plaintiff Directly Against Wave, Diosdado Banatao, Desi Banatao, Rey Banatao,**
27 **Dennis Bencala, Tallwood Venture Capital, Tallwood Investment Partners LLP, Tallwood**
28 **III, L.P., Tallwood Associates, L.P., and Tallwood Partners, L.P.)**

1 101. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in
2 full herein.

3 102. In 2019, after the Windtree Settlement, each Defendant communicated to Plaintiff, and
4 materially aided and abetted each other Defendant in communicating to Plaintiff, an offer to
5 redeem Plaintiff's Series E shares for [REDACTED] per share. Defendants also provided Plaintiff with
6 misleading financial statements and analyses in order to induce Plaintiff to forego exercising the
7 offer to redeem Plaintiff's Series E shares.

8 103. Reasonably and justifiably relying on these representations, Plaintiff did not immediately
9 accept Defendants' offer to redeem the Series E shares.

10 104. Plaintiff is informed and believe, and thereon alleges, that Defendants knew the offer to
11 redeem Plaintiff's Series E shares, and the representations concerning the financial condition of
12 Wave, including its purported liabilities of [REDACTED] were false at the time the statements were
13 made, or that Defendants intentionally failed to disclose material information to Plaintiff that
14 rendered these representations false, and made these material representations and intending by its
15 silence to induce reliance by Plaintiff (which was unaware of the falsity) to forgo legal action
16 related to the Windtree Settlement, and to forgo accepting the offer to redeem Plaintiff's Series E
17 Preferred shares.

18 105. Had Plaintiff known the foregoing facts, it would have immediately accepted Defendants'
19 offer to redeem its Series E Preferred shares, and/or it would have instituted legal action related to
20 the Windtree Settlement sooner.

21 106. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered
22 substantial damages in an amount to be proven at trial.

23 107. Defendants acted with fraud, malice, and oppression, as a result of which Plaintiff is
24 entitled to punitive damages to punish Defendants, and to set an example for others considering
25 similar misconduct.

26 **COUNT V**
27 **(BREACH OF FIDUCIARY DUTY)**

1 **(By Plaintiff, Directly and Derivatively on behalf of Wave, Against Diosdado Banatao, Desi**
2 **Banatao, Robert Christiansen, Derek Meyer, Juan Ignacio Aboitiz, Dennis Bencala,**
3 **Tallwood Venture Capital, Tallwood Investment Partners LLP, Tallwood III, L.P.,**
4 **Tallwood Associates, L.P., and Tallwood Partners, L.P.)**

5 108. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in
6 full herein.

7 109. Defendants, in their capacities as Directors, Officers and/or controlling shareholders of
8 Wave, owed fiduciary duties of loyalty, due care, independence, candor, good faith and fair
9 dealing to the shareholders of Wave, including Plaintiff. However, Defendants breached their
10 fiduciary duties and acted to put their personal interests (or the interests of those to whom they
11 were beholden) ahead of the interests of Plaintiff and Wave shareholders generally.

12 110. With respect to the MIPS acquisition, Defendants breached these duties by:

- 13 a. ignoring or failing to protect against the numerous conflicts of interest resulting
14 from their dual status as partners, owners or managers of investors in Wave and
15 owners of MIPS, while simultaneously owing fiduciary duties to Plaintiff and
16 other shareholders of Wave;
17 b. failing to adequately disclose to Plaintiff and other Wave shareholders all
18 necessary information in connection with the MIPS acquisition;
19 c. abusing their control over Wave to cause Wave to acquire MIPS for the benefit of
20 certain Directors, Officers and controlling shareholders of Wave, to the detriment
21 of Plaintiff and other Wave minority shareholders.

22 111. The Tallwood Entities were a controlling shareholder group because they, either
23 individually or collectively as part of a joint and closely affiliated group, [REDACTED]
24 [REDACTED] and/or exercised day-to-day control of Wave, and had effective
25 power to control or veto corporate decisions by virtue of its control of the Board of Directors and
26 Officers of Wave, and further exercised control over the business and affairs of Wave directly and
27 through its designated members on the Board.

28 112. Moreover, Defendants were controlled by and beholden to Banatao and the Tallwood
entities and, in their roles as executives or Directors of Wave, participated in the acts of

1 mismanagement and breaches of fiduciary duties alleged herein, acted in gross disregard of the
2 facts, or failed to exercise due care to prevent the unlawful and improper conduct described
3 herein.

4 113. Because Banatao and the Tallwood entities dominate and control the business and
5 corporate affairs of Wave, and are in possession of private corporate information concerning
6 Wave's assets, business, and future prospects, there exists an imbalance and disparity of
7 knowledge and economic power between Banatao and Tallwood on the one hand, and minority
8 shareholders including Plaintiff on the other, which makes it inherently unfair for Banatao and
9 Tallwood to pursue any proposed transaction wherein it will reap disproportionate benefits or
10 which will absolve it of its liabilities, to the detriment of Plaintiff and other minority shareholders.

11 114. Defendants knowingly aided, encouraged, cooperated and/or participated in, and
12 substantially assisted the other Defendants in the breaches of their fiduciary duties. By the acts,
13 transactions, and courses of conduct alleged herein, Defendants, individually and acting as a part
14 of a common plan, advanced their interests at the expense of Plaintiff and other minority
15 shareholders, and unfairly deprived Plaintiff and other minority shareholders of the true value of
16 their interests and voting power in Wave.

17 115. Plaintiff's claim related to the MIPS acquisition is brought derivatively on behalf of
18 Wave, and it is also brought directly because Defendants, including those who acted as Wave's
19 controlling shareholders and having majority or effective control, caused Wave to issue excessive
20 shares of its stock in exchange for assets that had lesser value, and the exchange caused an
21 increase in the percentage of the outstanding shares owned by Defendants and a corresponding
22 decrease in the share percentage and voting power owned by Plaintiff.

23 116. As a direct and proximate result of Defendants' wrongful acts, Wave and Plaintiff have
24 sustained substantial injuries for which they seek appropriate judicial relief, and Defendants'
25 conduct was a substantial factor in causing such injuries.

26 **COUNT VI**
27 **(BREACH OF FIDUCIARY DUTY)**

(By Plaintiff, Derivatively on behalf of Wave, Against Diosdado Banatao, Rey Banatao, John Scull, Juan Ignacio Aboitiz, Arthur Swift, Dennis Bencala, Tallwood Venture Capital, Tallwood Investment Partners LLP, Tallwood III, L.P., Tallwood Associates, L.P., and Tallwood Partners, L.P.)

117. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in full herein.

118. Defendants, in their capacities as Directors, Officers and/or controlling shareholders of Wave, owed fiduciary duties of loyalty, due care, independence, candor, good faith and fair dealing to the shareholders of Wave, including Plaintiff. However, Defendants breached their fiduciary duties and acted to put their personal interests (or the interests of those to whom they were beholden) ahead of the interests of Plaintiff and Wave shareholders generally.

119. With respect to the Windtree Settlement, Defendants breached these duties by:

- a. ignoring or failing to protect against the numerous conflicts of interest resulting from their dual status as partners, owners or managers of investors in Wave, owners of MIPS, or Directors and Officers facing personal liability to Windtree, while simultaneously owing fiduciary duties to Plaintiff and other shareholders of Wave;
- b. wasting Wave's corporate assets by diverting monies intended for operations to pay the Windtree Settlement;
- c. failing to adequately disclose to Plaintiff and other Wave shareholders all necessary information in connection with the Windtree Settlement;
- d. abusing their control over Wave to cause Wave to enter into the Windtree Settlement for the benefit of certain Directors, Officers and controlling shareholders of Wave, to the detriment of Plaintiff and other Wave minority shareholders.

120. The Tallwood Entities were a controlling shareholder group because they, either individually or collectively as part of a joint and closely affiliated group, [REDACTED] [REDACTED] and/or exercised day-to-day control of Wave, and had effective power to control or veto corporate decisions by virtue of its control of the Board of Directors and

1 Officers of Wave, and further exercised control over the business and affairs of Wave directly and
2 through its designated members on the Board.

3 121. Moreover, Defendants were controlled by and beholden to Banatao and the Tallwood
4 entities and, in their roles as executives or Directors of Wave, participated in the acts of
5 mismanagement and breaches of fiduciary duties alleged herein, acted in gross disregard of the
6 facts, or failed to exercise due care to prevent the unlawful and improper conduct described
7 herein.

8 122. Because Banatao and the Tallwood entities dominate and control the business and
9 corporate affairs of Wave, and is in possession of private corporate information concerning
10 Wave's assets, business, and future prospects, there exists an imbalance and disparity of
11 knowledge and economic power between Banatao and Tallwood on the one hand, and minority
12 shareholders including Plaintiff on the other, which makes it inherently unfair for Banatao and
13 Tallwood to pursue any proposed transaction wherein it will reap disproportionate benefits or
14 which will absolve it of its liabilities, to the detriment of Plaintiff and other minority shareholders.

15 123. Defendants knowingly aided, encouraged, cooperated and/or participated in, and
16 substantially assisted the other Defendants in the breaches of their fiduciary duties. By the acts,
17 transactions, and courses of conduct alleged herein, Defendants, individually and acting as a part
18 of a common plan, advanced their interests at the expense of Wave, Plaintiff and other minority
19 shareholders.

20 124. As a direct and proximate result of Defendants' wrongful acts, Wave and Plaintiff have
21 sustained substantial injuries for which they seek appropriate judicial relief, and Defendants'
22 conduct was a substantial factor in causing such injuries.

23 **COUNT VII**

24 **(BREACH OF FIDUCIARY DUTY)**

25 **(By Plaintiff, Derivatively on behalf of Wave, Against Gregory Corona)**

26 125. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in
27 full herein.

1 126. Defendant Corona, in his capacity as a Wave Director, owed fiduciary duties of loyalty,
2 due care, independence, candor, good faith and fair dealing to the shareholders of Wave,
3 including Plaintiff. However, Defendant Corona breached his fiduciary duties and acted to put his
4 personal interests and the interests of Windtree, Oakmont and Lakewood & Company, LLC ahead
5 of the interests of Plaintiff and Wave shareholders generally.

6 127. Defendant Corona breached his duties by failing to protect Wave and its shareholders,
7 including Plaintiff, after he learned of the malfeasance of other Wave Directors, Officers and
8 Tallwood in connection with the MIPS acquisition and Series E offering, and by agreeing to keep
9 that evidence of malfeasance hidden from Plaintiff and other Wave shareholders generally.

10 128. Defendant Corona knowingly aided, encouraged, cooperated and/or participated in, and
11 substantially assisted the other Defendants in the breaches of their fiduciary duties. By the acts,
12 transactions, and courses of conduct alleged herein, Corona advanced their interests at the
13 expense of Plaintiff and other minority shareholders.

14 129. As a direct and proximate result of Defendant Corona's wrongful acts, Wave and Plaintiff
15 have sustained substantial injuries for which they seek appropriate judicial relief, and Defendants'
16 conduct was a substantial factor in causing such injuries.

17 **COUNT VIII**

18 **(AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY)**

19 **(By Plaintiff, Directly and Derivatively on behalf of Wave, Against Entropy Research**
20 **Labs and Desi Banatao; and, in the alternative, against Tallwood Venture Capital,**
21 **Tallwood Investment Partners LLP, Tallwood III, L.P., Tallwood Associates, L.P., and**
22 **Tallwood Partners, L.P.)**

23 130. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in
24 full herein.

25 131. A claim for aiding and abetting a breach of fiduciary duty requires proof of: (1) the
26 existence of a fiduciary relationship; (2) a breach of a fiduciary duty; (3) knowing participation in
27 the breach by a defendant who is not a fiduciary; and (4) damages proximately caused by the
28 breach.

1 132. Entropy Research Labs and Desi Banatao, and in the alternative, if the Tallwood Entities
2 did not owe a fiduciary duty to Wave shareholders, each Tallwood Entity, aided and abetted the
3 other Defendants in breaching their fiduciary duties owed to the shareholders of Wave, including
4 Plaintiff, by actively and knowingly participating in the other Defendants' breaches of fiduciary
5 duties owed to Plaintiff in connection with the MIPS acquisition. In so doing, Defendants
6 rendered substantial assistance in order to effectuate the other Defendants' plan to engage in
7 unfair transaction in breach of their fiduciary duties.

8 133. By working in concert with the other Defendants to commit a breach of fiduciary duty to
9 injure Plaintiff and other minority shareholders, the Tallwood Entities (in the alternative),
10 Entropy Research Labs and Desi Banatao became members of a combination that sought to
11 achieve an unlawful purpose and/or to achieve a lawful purpose by unlawful means, which has
12 included breach of fiduciary duty and minority shareholder oppression.

13 134. As a direct and proximate result of Defendants' aiding and abetting and wrongful
14 conspiracy and their related, underlying wrongful acts, Plaintiff has sustained substantial injuries
15 for which it seeks appropriate judicial relief, and Defendants' conduct was a substantial factor in
16 causing such injuries.

17 **COUNT IX**

18 **(UNFAIR COMPETITION: CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)**

19 **(By Plaintiff Directly Against All Defendants)**

20 135. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in
21 full herein.

22 136. Defendants have engaged in unfair business practices in California by engaging in the
23 activities described above.

24 137. Plaintiff alleges that at all relevant times, Defendants' actions, including fraud, breach of
25 fiduciary duty, and other conduct set forth in this Complaint, also constituted fraudulent, unfair
26 and/or unlawful activities prohibited by California Business & Professions Code §§ 17200, *et*

1 *seq.*, and justify restitution to Plaintiff. Plaintiff has sustained injury in fact and has lost money or
2 property as a result of Defendants' unfair business practices.

3 138. This Court is authorized to order restitution as a remedy for any violation of California
4 Business & Professions Code §§ 17200, *et seq.* Plaintiff seeks full restitution of said monies
5 and/or property from Defendants as necessary and according to proof, to restore all monies
6 withheld or acquired by means of the unfair business practices complained of herein.

7 **COUNT X**

8 **(UNJUST ENRICHMENT)**

9 **(By Plaintiff, Directly and Derivatively on behalf of Wave, Against All Defendants)**

10 139. Plaintiff incorporates herein the allegations set forth above as if they had been set forth in
11 full herein.

12 140. Defendants received assets belonging to Plaintiff through investments made by Plaintiff in
13 Wave in the fraudulent Series E offering.

14 141. To the extent Defendants received the benefit of Plaintiff's monies without complying
15 with their fiduciary duties or as a result of fraud, Defendants were unjustly enriched.

16 142. Plaintiff is entitled to restitution of Defendants' unjust enrichment.

17 143. Accordingly, Plaintiff is entitled to disgorgement by Defendants of all monies, assets, and
18 benefits obtained directly or indirectly through Defendants' wrongful conduct as alleged herein.

19 **VI. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff Canyon Bridge demands relief against Defendants as follows:

- 21 1. For judgment to be entered for Plaintiff and against Defendants;
22 2. For Plaintiff to be awarded damages in an amount to be proven at trial as the law allows;
23 3. For a declaration that Plaintiff's purchase of Series E Preferred stock is to be rescinded;
24 4. For compensatory damages in an amount to be proven at trial as the law allows;
25 5. For exemplary damages to address Defendants' oppression, fraud and malice;
26 6. For all actual and special damages as pleaded herein, including all compensatory,
27 consequential, and economic damages, within the jurisdictional limits of the Court;
28

1 7. For restitution and disgorgement of all illicit proceeds generated as a result of the
2 wrongful conduct alleged herein;

3 8. For all costs and disbursements of this action, including reasonable attorneys' and experts'
4 fees;

5 9. For all statutory damages and penalties;

6 10. For an award of interest, including prejudgment interest, at the prevailing legal rate; and

7 11. For an award of such other and further equitable and/or injunctive relief as this Court may
8 deem just and proper.

9
10 DATED: April 20, 2020

NASSIRI & JUNG LLP

11
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13 By: 

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15 Kassra P. Nassiri
 Attorneys for Plaintiff

16 CANYON BRIDGE FUND I, LP
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DATED: April 20, 2020

By: _____

Kassra P. Nassiri
Attorneys for Plaintiff

CANYON BRIDGE FUND I, LP